

Washington, D. C. 20530

OGC 77-5181

10 August 1977

Honorable Barbara Allen Babcock
Assistant Attorney General
Civil Division
Department of Justice
Washington, D. C. 20530

Attention: Morton Hollander, Esq.
Chief, Appellate Section

Dear Ms. Babcock:

Re: Holbrook Bradley, et al. v. Cyrus R. Vance, et al.
(U.S.D.C.D.C., Civil Action No. 76-0085)

This is in response to your letter of 20 July 1977 in which you ask for our views as to whether or not an appeal should be taken from the District Court's recent memorandum decision in the above-captioned case. In its decision, a three-judge panel granted plaintiff's motion for summary judgment and held that the statutorily required retirement at age 60 for those persons covered by the Foreign Service Retirement System violates the equal protection guarantees of the Fifth Amendment of the Constitution.

In declaring section 632 of the Foreign Service Act (22 U.S.C. 1002) null and void on constitutional grounds, the court specifically rejected defendants' contentions that the Act's mandatory retirement provisions, to the extent they differ from the statutory provisions applicable to Civil Service personnel, which establish a mandatory retirement age of 70, were rationally justified by (a) the State Department's desire to create advancement opportunities for younger people, or (b) the asserted fact that Foreign Service personnel tend to work overseas where they are faced with unusual physical and psychological difficulties.

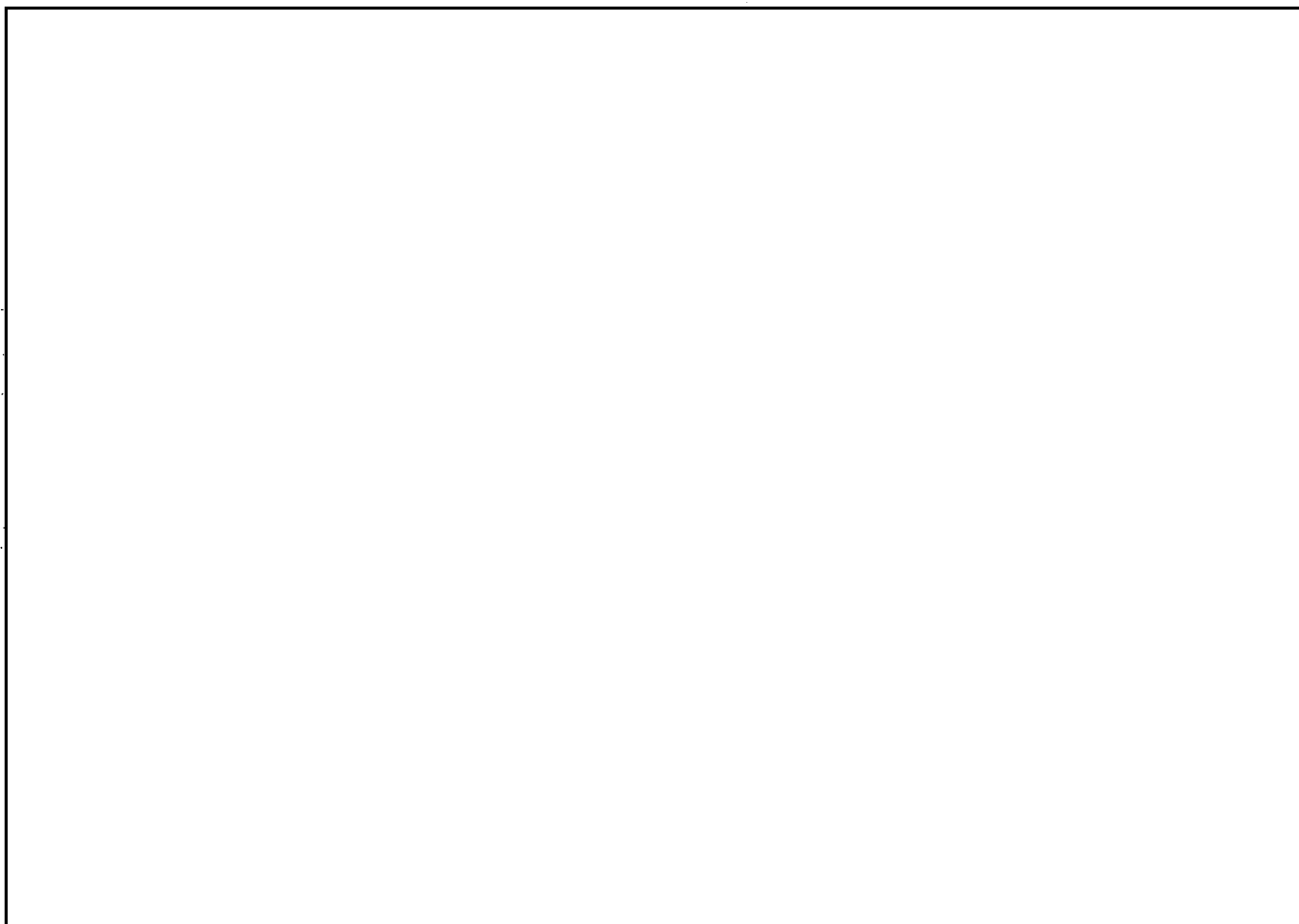
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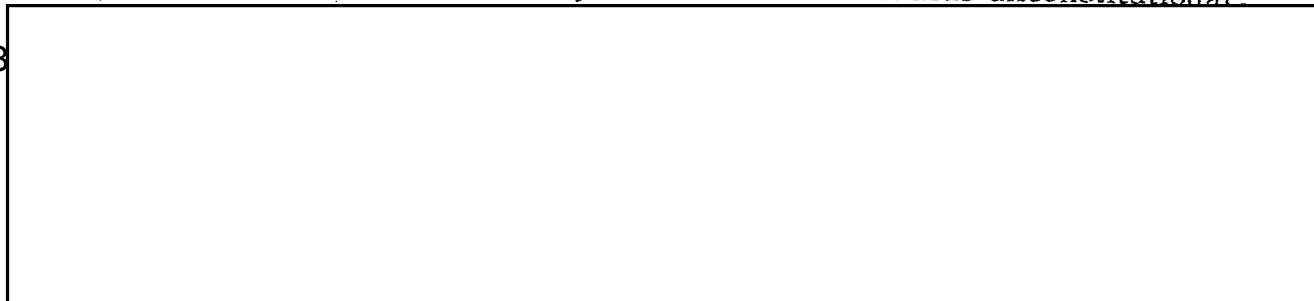
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We note that the District Court's adverse decision evidently stemmed in large part from what it perceived to be the defendants' failure to offer substantial evidence that Foreign Service employees working overseas serve in any more difficult or different positions than their State Department colleagues and other Federal employees in foreign assignments who are Civil Service personnel and thereby governed by its higher mandatory retirement age. Accordingly, the court concluded that the age 60 limit established under the Foreign Service Act was "patently arbitrary and irrational" and thus unconstitutional.

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